

APR 30 1979

MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM

No. **79-123**

EDELMIRO MARTINEZ RIVERA
Petitioner,

versus

HECTOR COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
GARCIA, INDIVIDUALLY
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
PUERTO RICO

EDELMIRO MARTINEZ RIVERA
Petitioner Pro-Se
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

EDELMIRO MARTINEZ RIVERA
Petitioner,

versus

HECTOR COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
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PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
PUERTO RICO

TO THE HONORABLE, THE CHIEF JUSTICE AND
THE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

The Petitioner, EDELMIRO MARTINEZ RIVERA, appearing pro se, respectfully prays that a Writ of Certiorari issue to review the Resolution of the Supreme Court of the Commonwealth of Puerto Rico entered in this case on February 1, 1979 dismissing the appeal which the petitioner, plaintiff below, took from the judgment the Superior court of Puerto Rico, San Juan Part, entered in the case on November 30, 1977, dismissing outright *motu proprio* the complaint.

JUDGMENTS BELOW

The unreported judgment of the Superior Court of Puerto Rico, San Juan Part, in Civil Action Number 77-8122 (905), appears at Appendix A, *infra*, page 1^a.

The unreported Resolution of the Supreme Court of the Commonwealth of Puerto Rico, in case number 7-78-4 rendered on February 1, 1979, appears at Appendix B, *infra*, page 2a. The denial of reconsideration by the Supreme Court of Puerto Rico, appears at Appendix C, *infra*, page 4a.

JURISDICTION

The decision of the Supreme Court of the Commonwealth of Puerto Rico was entered on February 1, 1979 and notified on February 5, 1979. A motion for reconsideration filed on February 15, 1979 was flatly denied without reasoning on March 1, 1979. A motion asking reinstatement of Appeal filed on March 27, 1979, was denied on April 5, 1979 as appears at Appendix E, *infra*, page 6a. This petition for certiorari is timely filed within the delays provided by 28 U.S.C. section 2101. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1258 (3) and Supreme Court Rules, Part V., Rule 19 (b) and Part XI, Rule 61.

QUESTIONS PRESENTED

1. Whether the Chief Justice and the Associate Justices of the Supreme Court of the Commonwealth of Puerto Rico, who are the individual parties defendants and the appellees in the suit, were legally, morally, and ethically qualified to participate as members, and in the name of the Supreme Court of the Commonwealth of Puerto Rico, in the judicial consideration or decision of the appeal.

2. Whether the Superior Court of Puerto Rico, San Juan Part, deprived the petitioner, plaintiff below, of his constitutional rights to judicial due process of law and to

equal protection of the laws by dismissing outright the instant action *motu proprio* within less than twenty-four (24) hours of its filing, without giving the plaintiff any form of notice or hearing and without waiting even the lapse of the ten (10) days legal period that the defendants had to appear and plead to the complaint.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND CANONS OF JUDICIAL ETHICS

The constitutional provisions, statutes, rules and Canon of Judicial Ethics involved are: CONSTITUTION OF THE UNITED STATES:

Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life; liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

Article IV, Sec. 2, Clause 1:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States".

CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO:

Article II, Section 7: [Right to life, liberty, and enjoyment of property; no death penalty; due process; equal protection of laws; impairment of contracts; exemption of property from attachment]

"The right to life, liberty and the enjoyment of property is recognized as a fundamental right of

man. The death penalty shall not exist. No person shall be deprived of his liberty or property without the process of law. No person in Puerto Rico shall be denied the equal protection of the laws. No laws impairing the obligation of contracts shall be enacted. A minimum amount of property and possessions shall be exempt from attachment as provided by law".

Article II, Section 8: [Protection against attacks on honor, reputation, and private life]

"Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life".

Rules of Civil Procedure of Puerto Rico:

DISQUALIFICATION, Tit. 32 L.P.R.A., Ap. II R 63.1
[When disqualified]

"A judge on his own initiative or on motion of a party, shall not act as such in an action or proceeding in any of the following cases:

(a) When he is interested in its outcome or is prejudiced or partial to any of the parties or his attorneys".

(b)

(c)

NEW CANONS OF JUDICIAL ETHICS OF PUERTO
approved on May 12, 1977, 4 L.P.R.A., App. 4, Sup. 1978,
page 544:

Canon XII:

A judge should not take part in any judicial proceeding in which he is forbidden to act by law, including, but not limited to, cases like the following, where:

A) He is prejudiced or biased with regard to any of the parties or counsel participating in the controversy or because he has prejudged the case;

b) He is directly or indirectly interested in the outcome of the case;

c)

STATEMENT OF THE CASE

Petitioner, Edelmiro Martínez Rivera, is a citizen of the United States of America born in Puerto Rico on May 3, 1901, and an attorney at law engaged since April 10, 1928 in the private practice of his profession.

During his practice of law, petitioner has earned his family livelihood and gained and enjoyed a good name and a respectable personal and professional reputation in the Puerto Rican community.

On September 29, 1977, the Supreme Court of Puerto Rico suspended the petitioner from the practice of law for a period of six (6) months on its holding that the petitioner Edelmiro Martínez Rivera infringed Canon 21 [Conflict of Interests] of the Code of Professional Ethics promulgated by the Court on December 24, 1970, by his acting as attorney for Engineer Victor E. Silva in a mortgage foreclosure proceeding filed against Victor E. Silva by Banco Crédito y Ahorro Ponceño, while Edelmiro Martínez Rivera was at the same time President and controlling stockholder of the Compañía de Fianzas de Puerto Rico (Puerto Rico Bonding Company), Silva's surety which as mortgagee, had an interest in the properties object of said action. The Court invoked "a conflict between Silva's interests and the interest of the Compañía de Fianzas de Puerto Rico" in the case, to declare that petitioner's "moral duty prevented him from representing Silva".

On November 29, 1977, after the Supreme Court of Puerto Rico flatly denied petitioner's motions to

reconsider and to vacate its order temporarily suspending the petitioner from the practice of law, the petitioner, plaintiff below, filed the present suit in the Superior Court of Puerto Rico, San Juan Part, against the individual justices of the Supreme Court of Puerto Rico as Officials of the Government of the Commonwealth of Puerto Rico, as parties defendants, under 42 U.S.C. 1983 [Civil action for deprivation of rights], claiming that the decree of suspension was entered by the defendants acting under color of law and without procedural due process in violation of the human rights and the privileges and immunities which the Constitution and laws of Puerto Rico and the Constitution and the laws of the United States of America guarantee to the plaintiff, and was for that reason, null and void.

On November 30, 1977, after less than 24 hours of the filing of petitioner's complaint, the Superior Court of Puerto Rico, San Juan Part, *motu proprio*, dismissed outright the action, without any form of notice to the petitioner, plaintiff below, calculated to give him an opportunity to be heard. Appendix A, *infra*, page 1a.

On December 29, 1977, petitioner, plaintiff below, filed notice of appeal to the Supreme Court of Puerto Rico in the form prescribed by law and by the Rules of the Supreme Court of Puerto Rico.

On January 12, 1978, acting on petitioner's appeal, the Supreme Court of Puerto Rico ordered the petitioner, appellant below, to show cause why the appeal should not be dismissed for want of a substantial constitutional question. Petitioner had his show cause paper filed with the Court on February 2, 1978.

Because by December 11, 1978 the Court had not acted further on the appeal, the petitioner, appellant below, moved the Court to set an oral hearing on its suggested point of why the appeal should not be dismissed for want of a substantial constitutional question.

On February 1, 1979, the Supreme Court of the Commonwealth of Puerto Rico denied the oral hearing asked for, and dismissed the appeal as well, stating in its Resolution that, we quote: "*Nothing in the law or in the Constitution required the said Superior Court of San Juan to hear the plaintiff before resolving that it lacked authority to act.*" (End of quote). Emphasis supplied. See Appendix "B", *infra*, page 2a.

On March 27, 1979, after the Supreme Court of Puerto Rico had flatly denied reconsideration, the petitioner, appellant below, moved the Court to reinstate the appeal invoking as ground for reinstatement that the individual Justices of the Court, themselves the parties appellees in the case, were personally interested in the out come of the suit and were thus legally, morally and ethically disqualified to take part as members of the Supreme Court of Puerto Rico, in the judicial consideration and decision of the appeal. The motion to reinstate, which the Court flatly denied on April 5, 1979, appears at Appendix "D", *infra*, page 4a.

REASONS FOR GRANTING THE WRIT

1. PARTICIPATION BY THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF PUERTO RICO IN THE CONSIDERATION AND DECISION OF PETITIONER'S APPEAL, BEING THEMSELVES THE PARTIES APPELLEES, WAS SO MORALLY, LEGALLY AND ETHICALLY WRONG THAT THEIR STATED ACTION CALLS FOR THE EXERCISE OF THIS COURT'S POWER OF REVIEW AND TO VACATE THE DECISION.-

Under Rule 63.1 (1) of the Rules of Civil Procedure of Puerto Rico, Title 32 App. II, L.P.R.A., a judge shall inhibit himself, at his own initiative or upon petition of a

party, from acting in a suit or proceeding in any of the following cases:

- a) Where he is interested in its outcome or is prejudiced or partial to any of the parties or his attorney.
- b)
- c)

Additionally, the "NEW CANONS OF JUDICIAL ETHICS OF PUERTO RICO" adopted by the Supreme Court of the Commonwealth of Puerto Rico on May 12, 1977, effective from September 1, 1977, and presently in force, establish the mandatory standards that the judges in the judiciary of Puerto Rico should observe.

Of such "New Canons of Judicial Ethics of Puerto Rico", the one relevant here is Canon XII, from which we quote the following pertinent portion:

"A judge should not take part in any judicial proceeding in which he is forbidden to act by law, including, but not limited to, cases like the following, where:

"a) He is prejudiced or biased with regard to any of the parties or counsel participating in the controversy or because he has prejudged the case;

"b) *He is directly or indirectly* interested in the out come of the case;

"As soon as he learns of a cause for disqualification a judge should disqualify himself through a written resolution stating the cause thereof, and notify all the parties."

And see American Bar Association Code of Judicial Conduct, C. (7) (d) (i).

It goes here without saying, that the manner in which the individual respondents comported themselves in the present suit, acting on the appeal as appellees and performing at the same time their own selfish interests, as justices of the appellate Court, departs so far from the accepted and usual course of judicial proceedings, that calls for an exercise of this Court's power of supervision.

The Resolution of the Supreme Court of Puerto Rico the subject of this petition, is so tainted by judicial impropriety that it should be held indisputably void and ordered reversed. It shows the way the respondents look at the "New Canons of Judicial Ethics" when their personal interest in the outcome of a case is at stake. Irresponsible and immoral conduct of judges such as is present in this case, is what clouds the integrity of the Courts and erodes public confidence in the judiciary.

2. DISMISSAL BY THE SUPERIOR COURT OF PUERTO RICO, SAN JUAN PART, OF PETITIONER'S SUIT WITHOUT NOTICE OR HEARING, AND THE DISMISSAL BY THE SUPREME COURT OF PUERTO RICO OF PLAINTIFF'S APPEAL, DEPRIVED THE PETITIONER OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND TO EQUAL PROTECTION OF THE LAWS, AND BOTH DECISIONS ARE IN RADICAL CONFLICT WITH APLICABLE DECISIONS OF THE COURT.-

The fact that the Superior Court of San Juan, Puerto Rico, dismissed petitioner's action without notice or hearing is indisputed here. It is so acknowledged in the Resolution of the Supreme Court of Puerto Rico, Appendix "B", page 2a.

The procedural safeguards requirements of the Fourteenth Amendment of the Constitution of the United States, and in no less extent the procedural safeguards of the Bill of Rights of the Constitution of the

Commonwealth of Puerto Rico [Article 11, Section 7], forbid the Superior Court of San Juan to render a judgment of dismissal in the herein action without first giving the petitioner, plaintiff below, notice and hearing. On the appeal from the judgment, grounded on the lack of the prerequisite notice and hearing, the Supreme Court of Puerto Rico could not dismiss the appeal shunning the constitutional question raised, by fanning the idea, to serve the personal interests of appellees, that "Nothing in the law or in the Constitution required the said Superior Court of San Juan to hear the plaintiff before resolving that it lacked authority to act."

On such statement in the Resolution of the Supreme Court of Puerto Rico, we should point out that the fundamental requisite of due process has been defined by this Honorable Supreme Court of the United States as nothing less than an opportunity to be heard at a meaningful time and in a meaningful manner. *Goldberg vs. Kelly*, 397 U. S. 254.

A court's sentence pronounced against a party without hearing him or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. *In Re Noell*, 1937, 93 Fed. (2) 5.

The Superior Court of Puerto Rico, San Juan Part, nor the Supreme Court of Puerto Rico, could not abridge or impair petitioner's constitutional right of access to the Courts by throwing his complaint out of Court without giving petitioner an opportunity to be heard.

"Right of access to the Courts is a freedom protected by the Petition of Grievances clause of Amendment I and Amendment 14 of the U. S. Constitution against abridgement by federal or state government." *Maryland Public, etc., vs Elkins*, D. C. Md. 430 Fed. Supp. 387.

Ordinarily, due process of law require opportunity for some hearing prior to deprivation of a significant

property interest. *Memphis Light, etc. vs. Craft*, 98 S. Ct. 1554 (1978).

To comply with due process, notice and hearing must always precede entry of final judgment depriving one of property. *Isabell vs. Sonoma County*, 1978, 577 P. (2) 188, 145 Cal. Rpts. 368.

In *Cary vs. Piphus*, 98 S. Ct. 1042 (1978), at page 1054, this Honorable Supreme Court of the United States considered the right to procedural due process to be "absolute", in the sense that it does not depend upon the merits of a claimant's substantive assertions.

Here, the interest of petitioner in his good name, reputation, honor or integrity are protected rights not only by the laws and Constitution of the United States, but as well by the laws and constitution of the Commonwealth of Puerto Rico; and where federally protected rights have been invaded or infringed, it has been ruled from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. *Marbury vs. Madison*, (1803), 5 U. S. 137, 177, 2 L. Ed. 60.

The right of the people, and consequently that of plaintiff, as one of them, to have access to the courts of Puerto Rico to raise and elucidate, as a litigant, the causes which, is his consideration, justify judicial action, is an integral part of his freedom and therefore, a right of constitutional dimension, the importance or substantiality of which does not require or need to be proved by plaintiff with any aliunde evidence since, as a constitutional mandate, it operates "ex proprio vigore" and uninterruptedly during the lifetime of the citizen to which it applies. Cf. *Estado Libre Asociado de Puerto Rico vs. Hermandad de Empleados*, 104 D.P.R. 436 (1975) (Hon. José Trías Monge).

The constitutional guarantee of due process of law operates in favor of the individual to protect him in the enjoyment of his life and property, and at the same time it applies against judges and courts, barring them from the

exercise of their adjudicatory judicial functions without advising the interested parties of their opportunity to be heard. The due process of law requirement applies mandatorily to all judges of the courts of first instance, denying them the authority to abort this requirement as it was in fact done in this case by the trial judge, the Honorable Domingo Rafucchi, who in his dynamic and precipitate action decided to dismiss the complaint without even waiting for the ten-day term established by the Rules of Civil Procedure, within which defendants could file their allegations.

From *Mora vs. Mejías*, 206 F. 2d. 377 (1st. Cir. 1953) we quote:

"There cannot exist under the American flag any governmental authority which is not limited by the requirements of due process of law as guaranteed by the Constitution of the United States".

Under the 14th Amendment to the Constitution of the United States, plaintiff unquestionably has the right to have access to the courts of Puerto Rico and to be heard on the matter in controversy notwithstanding the ideas on the matter that the magistrate in charge may have formed. The access to the courts of Puerto Rico must be constitutionally adequate, effective and significant. *Bounds v. Smith*, (April 27, 1977) 97 S. Ct. 1491. "Meaningful access to the courts is the touchstone". id.

CONCLUSION

FOR THESE REASONS, Petitioner respectfully prays this Honorable Court to issue a Writ of Certiorari to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico.

EDELMIRO MARTINEZ RIVERA

Petitioner Pro-Se

112 Manuel Domenech Ave.,
Hato Rey, Puerto Rico, 00918
Telephone (809) 764-9303

CERTIFICATE

I certify that I have served the foregoing Petition for Certiorari on Respondents, Messrs. Héctor Colón Cruz, José Trías Monge, Carlos V. Dávila, Hiram Torres Rigual, Angel M. Martín, Jorge Díaz Cruz, Carlos J. Irizarry Yunque and Antonio S. Negrón García, by U. S. Mail, postage prepaid, this 15 day of April, 1979.

EDELMIRO MARTINEZ RIVERA

APPENDIX A

IN THE SUPERIOR COURT OF PUERTO RICO
SAN JUAN PARTEDELMIRO MARTINEZ RIVERA,
Plaintiff

v.

Civil No. 77-8122

HECTOR COLON CRUZ,
JOSE TRIAS MONGE,
CARLOS V. DAVILA,
HIRAM TORRES RIGUAL,
ANGEL M. MARTIN,
JORGE DIAZ CRUZ,
CARLOS J. IRIZARRY YUNQUE,
and ANTONIO S. NEGRON GARCIA,
DefendantsAction for nullity of
judgment and
injunctive relief.

JUDGMENT

After examining the allegations of the complaint, we conclude that it is a direct attack on a final judicial decision of the Hon. Supreme Court of Puerto Rico in the exercise of its inherent authority within our judicial system. (*In Re: Edelmiro Martínez Rivera*, No. 0-74-197, Disciplinary Action, Per Curiam Opinion issued on September 29, 1977, Bar Asso. Ad. Sheet 1977-79; Rule 13 of the Rules of the Supreme Court, 4 L.P.R.A. app. I, R. 13). This being the case, the complaint is, by definition, excluded from the category of cases or controversies justiciable by the court of first instance in Puerto Rico. Judiciary Act of 1952, 4 L.P.R.A. § 1 *et seq.* As a consequence thereof, the court, *motu proprio*, dismisses outright the complaint in this case for lack of jurisdiction over a justiciable case or controversy.

To be registered and notified.

Given in San Juan, Puerto Rico, this 30th day of November 1977.

/s/ DOMINGO RAFFUCCI
SUPERIOR COURT JUDGE

I CERTIFY:

BELEN BONIT
CLERK

By: Rosa Méndez
Deputy Clerk

APPENDIX B

IN THE SUPREME COURT OF PUERTO RICO

EDELMIRO MARTINEZ RIVERA
Plaintiff Appellant

No. 0-78-4

vs.

HECTOR COLON CRUZ, etc.
Defendants-Appellees

Action for nullity of
judgment and
injunctive relief.

RESOLUTION

San Juan, Puerto Rico, February 1, 1979

The motion of December 11, 1978, requesting a hearing for oral argument is hereby denied.

At the same time, the appeal taken against the judgment rendered on November 30, 1977 by the Hon. Domingo Raffucci, Superior Court Judge, is dismissed because it does not raise a substantial constitutional question.

The facts of this case are the following: On September 20, 1976 this Court ordered appellant's suspension from the practice of law for a period of six months. On November 28, an action was filed asking the Superior Court to declare the aforementioned judgment of this Court void. On November 30, 1977, the Hon. Domingo Raffucci dismissed the complaint for considering that it did not present a justiciable controversy. That judgment was appealed before us, and it was alleged that the Superior Court's dismissal of the complaint violates his constitutional guarantee to due process of law.

There is absolutely no merit to said statement. The Supreme Court of Puerto Rico is the court of last resort in the country. Section 3, art. V of the Constitution of the Commonwealth of Puerto Rico; Section 1 of the Judiciary Act, Act No. 11 of July 24, 1952, 4 L.P.R.A. § 1. Its decisions may only be reviewed by state supreme courts under certain circumstances. 28 U.S.C. § 1258.

The Superior Court's lack of jurisdiction is evident from the very terms of the complaint in this case. Nothing in the law or in the Constitution required said Court to hear plaintiff before deciding that it lacked authority to act. It is for the foregoing reasons that the appeal in this case is dismissed.

It was thus agreed by the by the Court, as certified by the Clerk.

Ernesto L. Chiesa
Clerk

APPENDIX C

IN THE SUPREME COURT OF PUERTO RICO

EDELMIRO MARTINEZ
RIVERA

Plaintiff-Appellant

v.

HECTOR COLON CRUZ,
etc.

Defendants-Appellees

Appeal from the
Superior Court,
San Juan Part,

No. 0-78-4

Action for nullity of
judgment and injunctive
relief.

RESOLUTION

San Juan, Puerto Rico, March 1, 1979

The Motion for Reconsideration is denied. It was so
agreed by the Court and certified by the Clerk.

Mr. Justice Negrón García took no part in the decision.

(Sgd.) Ernesto L. Chiesa
Clerk

APPENDIX D

IN THE SUPREME COURT OF PUERTO RICO

EDELMIRO MARTINEZ
RIVERA

Plaintiff-Appellant

v.

HECTOR COLON CRUZ, etc.
Defendants-Appellees

Number 0-78-4

Action for nullity of
judgment and injunctive
relief.

MOTION REQUESTING REINSTATEMENT
OF APPEAL

TO THE HONORABLE COURT:

Plaintiff-appellant herein respectfully moves that the
Resolution dated February 1, 1979 be set aside and that
the reinstatement of the appeal in this case be ordered for
further proceedings in accordance with the Rules of this
Supreme Court.

Since the present Justices of the Supreme Court of
Puerto Rico are de defendants-appellees in this case, and
since it would be in their interest as such to affirm the
judgment issued in their favor by the lower court, the
Resolution dismissing the appeal authored by these same
defendants as judges of last resort is a gross and rude
violation of the traditional legal principle that one may
not act in a litigation in the double capacity as judge and
party and constitutes a vice which irretrievably
contaminates the essence and blood of the Resolution of
February 1, 1979, and makes it a judicial act which is null
and morally and legally untenable.

As the Supreme Court of Puerto Rico states in *IN Re:
Rodríguez Torres*, 104 D.P.R. 758, at page 766: "justice
must be immaculate not only in its inner reality but in its
external appearance."

This principle was the basis for the Supreme Court of
Puerto Rico's "Code of Professional Ethics for Lawyers"
and for its "New Canons of Judicial Ethics of Puerto
Rico."

Particularly Canon XII of the "New Canons of Judicial
Ethics," in its subsection (a) bars the judge from having
jurisdiction in any judicial proceeding where he is
"prejudiced or biased" with regard to any of the parties or
counsel participating in the controversy or because he has
prejudiced the case; and in its subsection (b) bars the

judge from having jurisdiction in any judicial proceedings in which he is *"directly or indirectly interested in the outcome of the case."*

WHEREFORE, plaintiff prays that the Resolution of February 1, 1979, be set aside and that the appeal in this case be reinstated for further proceedings prescribed by the Rules.

San Juan, Puerto Rico, this 27th day of March 1979.

I CERTIFY: Having mailed on this date a copy of this writ to each and every one of the defendants in this case.

RESPECTFULLY SUBMITTED,

(Sgd.)

EDELMIRO MARTINEZ RIVERA
Plaintiff-Appellant
112 Avenida Manuel V. Domenech
Hato Rey, Puerto Rico 00918
Tels. 764-9306 & 763-8185

APPENDIX E

IN THE SUPREME COURT OF PUERTO RICO

EDELMIRO MARTINEZ RIVERA
Plaintiff-Appellant

No. 0-78-4

v.
HECTOR COLON CRUZ, etc.
Defendants-Appelles

Action for nullity of
judgment and
injunctive relief.

RESOLUTION

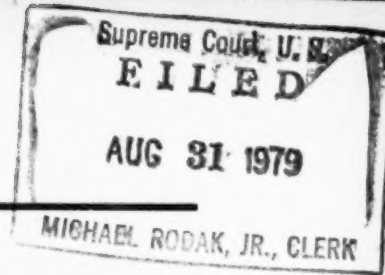
San Juan, Puerto Rico, April 5, 1979

The motion for reinstatement of appeal filed on March 27, 1979 has been considered as a second motion for reconsideration, and the same is denied. Appellant shall abide by the mandate of March 1, 1979.

It was thus agreed by the Court and certified by the Clerk.

Mr. Chief Justice Trías Monge did not take part in the decision.

Ernesto L. Chiesa
Clerk



IN THE
Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-123

EDELMIRO MARTINEZ RIVERA

Petitioner,

v.

HECTOR A. COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
GARCIA, INDIVIDUALLY

Respondents.

**ON PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME
COURT OF THE COMMONWEALTH OF
PUERTO RICO**

RESPONDENTS' BRIEF IN OPPOSITION

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IN THE
Supreme Court of the United States
 OCTOBER TERM, 1979.

No. 79-123

EDELMIRO MARTINEZ RIVERA

Petitioner,

v.

HECTOR A. COLON CRUZ, JOSE TRIAS MONGE,
 CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
 ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
 IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
 GARCIA, INDIVIDUALLY

Respondents.

**ON PETITION FOR A WRIT OF
 CERTIORARI TO THE SUPREME
 COURT OF THE COMMONWEALTH OF
 PUERTO RICO**

**RESPONDENTS' BRIEF IN OPPOSITION
 TO THE HONORABLE COURT:**

Now come respondents through their undersigned attorneys and respectfully pray that the Writ of Certiorari requested by Petitioner to review the Resolution of the Supreme Court of the Commonwealth of

Puerto Rico rendered in the present case on February 1, 1979, be denied.

RESOLUTION BELOW

Respondents adopt the references made by petitioner at page 2 of his petition as to the judgment of the Superior Court of Puerto Rico, San Juan Part, in Civil Action Number 77-8122 (905)¹ and to the unreported Resolution of the Supreme Court of the Commonwealth of Puerto Rico in case number 0-78-4 rendered on February 1, 1979.²

STATEMENT OF THE CASE

On September 29, 1977, the Supreme Court of Puerto Rico entered judgment suspending petitioner herein from the practice of law for a period of six months. In its per curiam opinion, the Supreme Court (1) adopted the findings of fact of the Special Commissioner who heard and received the evidence presented in the disciplinary proceedings against petitioner and (2) decided that he had violated Canon 21 of the Code of Professional Ethics which provides that "the lawyer has the obligation to represent his client with complete loyalty", and specifically states that "no lawyer should accept employment when his professional judgment might be affected by his personal interests". See 4 L.P.R.A., Vol. 1A, 1977 Cum.

¹ Petition, Appendix A, pp. 1a through 2a.

² Petition, Appendix B, pp. 2a through 3a. Respondents want to call the attention of this Honorable Court as to the fourth paragraph of Appendix B. The last sentence of said paragraph shall read as follows: "Its decisions may only be reviewed by the Supreme Court of the United States under certain circumstances, 28 U.S.C. §1258".

Supp., App. IX, C 21, p. 500. The Supreme Court also decided that Petitioner had used disrespectful language directed against a Superior Court judge. But in view of the circumstances which gave rise to petitioner's expressions, the Court determined that no sanction other than an admonition was justified.

Petitioner filed two successive petitions for reconsideration of the suspension judgment before the Supreme Court of Puerto Rico on October 14 and October 26, 1977.

In both petitions for reconsideration he claimed that said judgment violated his rights under the Constitution of the United States. He specifically alleged that it violated (1) his "... inalienable right ... to be protected against abusive attacks on his honor, reputation and private life ... a fundamental right guarantee to [Petitioner] by the Constitution and the laws of the United States ..."; (2) his rights under "... the constitutional presumption of innocence ... fair treatment and due process of law ... guaranteed by the Constitution and the laws of the United States ..."; and (3) his rights under Article IV, Section 2 of the Constitution of the United States and under the Fourteenth Amendment thereto. Petitioner also alleged in his petitions for reconsideration that Canon 21 of the Puerto Rico Code of Professional Ethics violated the privileges and immunities guaranteed by the Constitution and the laws of the United States; that its provisions are "... too vague, obscure, uncertain and ill-defined to be considered constitutionally valid for the purpose of punishing the attorneys that may infringe it", and it is "so fluid" that "it fails to give an attorney an idea of the punishment he risks by infringing it ...". The Supreme Court of Puerto Rico denied on the merits both petitions for reconsideration.

Rather than attempting to obtain direct review by this Honorable Court through certiorari under 28 U.S.C. §1258(3) on November 29, 1977 petitioner filed the action herein involved before the San Juan Part of the Superior Court of the Commonwealth of Puerto Rico, which is a court inferior to the Supreme Court of Puerto Rico. The action filed by petitioner before the Superior Court of Puerto Rico, was brought against the Justices of the Supreme Court of Puerto Rico. He sought the Superior Court to declare null and void the final disciplinary judgment of the Supreme Court of Puerto Rico and to enjoin its effects. He also sought damages against the defendants for the amount of \$100,000.00.

The action before the Superior Court of Puerto Rico was not brought under 42 U.S.C. 1983 as it is incorrectly asserted by Petitioner at page 6 of his Petition.

On November 30, 1977 the Superior Court of Puerto Rico, *motu proprio*, dismissed the action for lack of jurisdiction.

On December 29, 1977 petitioner filed notice of appeal to the Supreme Court of Puerto Rico.³

³ Meanwhile, on December 9, 1977 petitioner herein filed another action before the Federal District Court for the District of Puerto Rico. The action before the Federal District Court was brought under 42 U.S.C. Sec. 1983 and its jurisdictional counterpart, 28 U.S.C. 1343(3)(4). It was brought against the Justices of the Supreme Court of Puerto Rico and he also prayed the Federal District Court to declare null and void the final disciplinary judgment of the Supreme Court of Puerto Rico.

In the complaint filed before the Federal District Court petitioner raised the same issues presented before the Supreme Court of Puerto Rico and before the Superior Court of Puerto Rico. He alleged, in general terms, that the suspension judgment deprived him of "... civil rights, privileges and immunities secured to him

On January 12, 1978 the Supreme Court of Puerto Rico ordered the petitioner to show cause why the appeal should not be dismissed for want of a substan-

by the Constitution and laws of the United States of America and the Constitution and laws of Puerto Rico." In support of this claim he specifically made the following allegations: (1) That defendants ordered the Solicitor General to file a complaint for disbarment against him after considering an investigation report submitted by the Attorney General regarding his professional conduct; (2) that defendants thereby determined the existence of cause to disbar him, and this action "... *ipso jure* disqualified the Honorable Judges defendants to intervene further in the case"; (3) that the second charge in the disbarment complaint [relating to the use of disrespectful language against a Superior Court judge] was barred by double jeopardy and *res judicata*, as well as by *laches*; (4) that defendants did not allow oral argument ("prior opportunity to be heard in a public session") on the Special Commissioner's findings of fact; and (5) that the Constitution of the Commonwealth of Puerto Rico does not grant the Supreme Court "... first instance jurisdiction to entertain, ventilate and decide disbarment proceedings as the one subject of this complaint ..."

Petitioner herein also alleged that the suspension judgment entered against him was based on the Canons of Professional Ethics adopted by the Supreme Court of Puerto Rico which suffer from constitutional infirmities described as follows: "... adopted by the Supreme Court of Puerto Rico, (1) with generalizations, (2) in vague, ambiguous, imprecise, confusing and contradictory language, with no guidelines, norms or standards of facts on which to rely for their reasonable observance and just application; (3) with no defined rule or principle of law to judge violation of the canons or measure the kind nor the extent (sic) of the punishment to which a lawyer that fails to observe any or all of the Canons may be subjected: (3) (sic) with no provision for a neutral forum separate from the Supreme Court itself for the procedural implementation of the Canons with the guarantees of impartiality, fairness and prurity (sic) required under the doctrines of due process of law and equal protection of the law; (4) (sic) that allow the Supreme Court of Puerto Rico to claim and exercise inherent and unrestrained power to investigate the personal and professional conduct of lawyers, to determine probable cause on evidence of infringement submitted; to characterize

tial constitutional question. On February 2, 1978, petitioner filed his show-cause paper.

lawyers (sic) conduct on the score of taste, civility, morality, or ethics without facts on which each characterization applies; to institute disciplinary proceedings, to hear and adjudicate the complaints or accusations presented, as well as to impose at its will or whim any punishment or penalty that it sees fit regardless of an intentional or involuntary fault, without right of recourse by the lawyer found guilty."

On the basis of such allegations, petitioner claimed that the disciplinary judgment entered by the defendants against him "... is inherently null and void as being a judgment reached and entered without jurisdiction and/or in gross violation and curtailment of basic human rights, privileges and immunities, guaranteed to the plaintiff by the Constitution and laws of the United States of America and the Commonwealth of Puerto Rico ..." Plaintiff also stated that he had "... repeatedly alleged and claimed to the defendants that the per curiam opinion and judgment they entered in the disbarment proceeding referred to above is inherently null and void ..." because of said constitutional infirmities.

Plaintiff finally alleged, in the two concluding paragraphs of the complaint, (1) that he had "... exhausted with no avail all remedies at his disposal under the Constitution and laws of the Commonwealth of Puerto Rico for vindication on his inalienable rights and remedies as an American citizen"; (2) that he would suffer irreparable damages as a result of his suspension; and (3) that he would also be deprived, if forced to comply with the judgment of suspension, of "... his constitutional rights, among others of freedom of speech and expression, freedom of association and to contract and render his professional services to whoever (sic) he chooses ... of his livelihood, liberty or property without due process of law or denied equal protection of the law."

The District Court issued an order to show cause why plaintiff's request for injunctive relief should not be granted, set a consolidated preliminary and permanent injunction hearing for January 19, 1978, ordered that a pretrial conference be held prior thereto, and instructed counsel for the parties to meet and prepare a pretrial order which would include a comprehensive stipulation of all uncontested facts. Such proposed pretrial order was

On December 11, 1978 petitioner moved the Supreme Court of Puerto Rico to set an oral hearing in the case.

On February 1, 1979, the Supreme Court of Puerto Rico denied the oral hearing and dismissed the appeal because it did not raise a substantial constitutional question. (See Petitioner Appendix B, pp. 2a through 3a).

On March 27, 1979 the petitioner moved the Supreme Court of Puerto Rico to reinstate the appeal. It was denied on April 5, 1979 and the present petition followed.

submitted by the parties at a pretrial conference held on January 16, 1978. All relevant facts involved in the litigation were stipulated, including pertinent documents relating to the disciplinary proceedings. Prior to the pretrial conference, defendants had filed their answer on January 12, 1978 raising several affirmative defenses: lack of jurisdiction, res judicata and collateral estoppel, judicial immunity and failure to state a claim upon which equitable or declaratory relief could be granted. In view of the pleadings and the stipulation of uncontested facts, defendants also moved for summary judgment on the basis of their four affirmative defenses.

The motion for summary judgment was denied and the hearing on the order to show cause was held on January 19, 1978. At said hearing the case was submitted for decision on the merits on the basis of the stipulations agreed upon between the parties and plaintiff's testimony relating to his good reputation. On January 27, 1978 the District Court issued an order dismissing the action for lack of jurisdiction on the authority of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923). The reasons for dismissal were stated with particularity in an opinion entered on February 8, 1978.

Petitioner appealed from the dismissal of his action to the United States Court of Appeals for the First Circuit, which on December 1, 1978 issued the *per curiam* opinion that appears as Appendix to this Brief in Opposition, pp. A-1 through A-2. The Court of Appeals affirmed the judgment of the Federal District Court.

REASONS FOR DENYING THE WRIT

The Petition In The Instant Case Is Frivolous, It Does Not Present A Substantial Federal Question And The Certiorari Should Be Denied For Lack Of Jurisdiction

The jurisdiction of this Court was invoked under 28 U.S.C., Sec. 1258 (3).

Said statute states that:

"Final judgment or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:

- (1)
- (2)
- (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of the Commonwealth of Puerto Rico is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States".

The present form was given to said statute in 1961 in order to eliminate the right to appeal from the Supreme Court of the Commonwealth of Puerto Rico to the Court of Appeals for the First Circuit and to provide that final judgments and decrees entered by the Supreme Court of Puerto Rico shall be reviewed instead by the Supreme Court of the United States.

The Judicial Conference and the Department of Justice supported the passage of this legislation, recognizing that in case involving a non-Federal question, the Court of Appeals for the First Circuit would not reverse the Supreme Court of Puerto Rico unless the decision is "inescapably wrong" or "patently erroneous". 1961 *U.S. Code Congressional and Administrative News*, page 2449.

It has been held repeatedly that the Supreme Court of Puerto Rico should not be reversed in a matter of local law unless the court's determination is "inescapably wrong" or patently erroneous". *Sancho Bonet v. Texas Co.*, 308 463 (1940); *De Castro v. Board of Commissioners*, 322 U.S. 451 (1944); *C. Brewer P.R. v. Corchado*, 303 F. 2d 654 (1962); *Acosta Marrero v. Commonwealth of Puerto Rico*, 275 F. 2d 294 (1960); *Fullana Corp. v. P.R. Planning Board*, 257 F. 2d 355 (1958); *Marquez v. Aviles*, 252 F. 2d 715 (1958); *Iglesias Acosta v. Secretary of Finance of Puerto Rico*, 220 F. 2d 651 (1955); *Sagastivelza v. P.R. Ins.*, 171 F. 2d 563 (1949); *Compose v. Central Cambalache, Inc.* 157 F. 2d 43 (1946)

This Court stated in *Fornaris v. Ridge Tool Co.* 400 U.S. 41 (1970) that:

"The relations of the federal courts to Puerto Rico have raised delicate problems. It is a Spanish-speaking Commonwealth with a set of laws still impregnated with the Spanish tradition. Federal Courts, were inclined to construe Puerto Rican Laws in the Anglo-saxon tradition which often left little room for the overtones of Spanish culture. Out of that experience grew a pronouncement by this court that a Puerto Rican court should not be overruled on its construction of local law unless it could be said to be 'inescapably

wrong'. See *Bonet v. Texas, Co.*, 308 U.S. 463, 471". (See also *Diaz Gonzalez v. Colon Gonzalez*, 536 F. 2d 453 (1976)).

In order to properly invoke the jurisdiction of this Honorable Court, petitioner must present a substantial federal question, not merely a frivolous or colorable one.⁴

Petitioner herein not only fails to present a substantial federal question, upon which this Honorable Court would have jurisdiction under 28 USC 1258 (3), but his petition is a frivolous one. Consequently, the certiorari should be denied for lack of jurisdiction.

On the contrary, the background of this case (see statement of the case and footnote 3, *supra*) demonstrates that the petition for a writ of certiorari presented in this case represents the most gross misuse by a claimant of the judicial proceedings.

The petition herein represents a new intent of the petitioner to attack the final judgment issued on September 29, 1977 by the Supreme Court of Puerto Rico suspending him from membership in the Puerto Rican bar for a period of six months.

When the Supreme Court of Puerto Rico considered the petitioner's disciplinary case and his constitutional claims, if he understood that a substantial federal question was involved in his case, he could have sought direct review in this Honorable Court. See Appendix to this Brief, pp. A-1 through A-2.

⁴ *Prensa Insular de Puerto Rico v. People of P. R.*, 189 F. 2d 1019 (1951); *Mercado v. Lluveras Pasarell*, 225 F. 2d 715, Cert. denied 350 U.S. 936

But he did not seek direct review in this Honorable Court. Rather he preferred to attack the final judgment of the Supreme Court of Puerto Rico through an injunctive and damages action before an inferior court of the judicial system of the Commonwealth of Puerto Rico, for the alleged deprivation of his civil rights.⁵

At the same time he collaterally attacked the judgment of the Supreme Court of Puerto Rico by filing an action before the Federal District Court for the District of Puerto Rico, raising the same issues previously presented and considered by the Supreme Court of Puerto Rico.⁶ The District Court dismissed the action for lack of jurisdiction and as barred by *res judicata*. By a *per curiam* judgment issued by the Court of Appeals for the First Circuit it affirmed the judgment of the District Court. See Appendix, pp. A-1 through A-2.

When the Court of Appeals for the First Circuit issued its judgment, once again, if petitioner herein understood that a substantial federal question was involved in his case, he could have sought direct review in this Honorable Court under 28 U.S.C. 1254, but he did not seek it.

Since the action that petitioner filed before the Superior Court of Puerto Rico was dismissed for lack of jurisdiction he appealed to the Supreme Court of Puerto Rico. Said appeal was dismissed by the Su-

⁵ The Supreme Court Justices, defendants in the instant case, are absolutely immune from liability for their judicial acts under the well-known doctrine of judicial immunity. *Pierson v. Ray*, 386 U.S. 547 (1967), cited with approval in *Stump et al v. Sparkman*, et al 435 US 349, 55 L Ed. 331 (1978).

⁶ Also the same issues raised before the Superior Court of Puerto Rico in this case.

preme Court of Puerto Rico because it did not raise a substantial constitutional question. Now petitioner questions the moral, legal and ethical capacity of the Justices of the Supreme Court of Puerto Rico to consider and decide his appeal.

Respondents respectfully submit that it is a frivolous allegation. First of all when petitioner voluntarily submitted his appeal to the Justices of the Supreme Court of Puerto Rico he was accepting the capacity of its Justices, as to all the effects to decide his appeal. If said Justices could not decide his appeal there would not be a court to adjudicate the case. Furthermore, the doctrine of the necessity calls for the consideration of the case, by the Justices of the Supreme Court, who were the only Justices empowered to decide the case.

Finally petitioner raises the issue of whether the Superior Court could dismiss *motu proprio* the petitioner's action because of lack of jurisdiction. As a matter of fact and law it could. In addition it is a matter of local law. And it has been ruled by this Honorable Court that where state decisions involve only questions of a local law, no substantial federal question is presented. *Black v. Cutter Laboratories*, 351 US 292, 299 (1956).

CONCLUSION

The present case does not present a substantial federal question, it is one of a frivolous nature and involves only issues of purely local law. For the foregoing reasons certiorari should be denied.

San Juan, Puerto Rico, August 24, 1979.

/s/ HECTOR A. COLON CRUZ
Hector A. Colon Cruz
Solicitor General

/s/ PEINA COLON DE RODRIGUEZ
Peina Colon De Rodriguez
Assistant Solicitor General

APPENDIX

United States Court of Appeals

FOR THE FIRST CIRCUIT

No. 78-1088

EDELMIRO MARTINEZ RIVERA,
Plaintiff, Appellant,

v.

JOSE TRIAS MONGE, et al.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT CIRCUIT
FOR THE DISTRICT OF PUERTO RICO

[HON. HERNAN G. PESQUERA, *U.S. District Judge*]

Before COFFIN, Chief Judge,
CAMPBELL and BOWNES, *Circuit Judges.*

Edelmiro Martinez.Jr., on brief for appellant.
*Lino J. Saldana, Hector A. Colon Cruz, and Reina
Colon De Rodriguez* on brief for appellees.

December 1, 1978

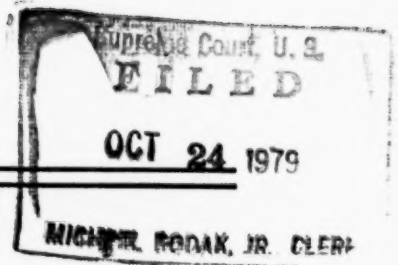
PER CURIAM. Appellant's complaint alleged that the members of the Puerto Rico Supreme Court, defendants-appellees, violated his constitutional rights in suspending him from membership in the Puerto Rican bar. The action

was brought under 42 U.S.C. § 1983 and grounded jurisdiction on 28, U.S.C. § 1343. The district court dismissed the action for lack of subject matter jurisdiction and as barred by res judicata.

The settled law, with which we agree, is "that disciplinary orders of the highest court of a state may be reviewed federally only in the Supreme Court by petition for certiorari and not by suits in the district courts."* *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125 (7th Cir. 1977); *Doe v. Pringle*, 550 F.2d 596 (10th Cir. 1976); *Mackay v. Nesbell*, 412 F.2d 846 (9th Cir. 1969); *Ginger v. Circuit Court for Wayne County*, 372 F.2d 621 (6th Cir. 1967). Cf. *In re MacNeil*, 266 F.2d 167, 172 (1st Cir. 1959) (noting that constitutional claims in state disbarment proceedings may be preserved for federal review by the Supreme Court under its certiorari jurisdiction but do not provide a basis for removal). This complaint in essence seeks review of a state court's disciplinary order, although it is couched in terms of a suit against the individual members of the court. Appellant "cannot invoke the provisions of § 1983 of the Civil Rights Act in federal district court so as to circumvent and avoid his obligation to seek direct review in the United States Supreme Court." *Doe v. Pringle*, *supra*, 550 F.2d at 599. We agree with the district court's dismissal for want of jurisdiction.

Affirmed.

* This rule might be questionable in no review of the constitutional issues were available in the state court. *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 124 (7th Cir. 1977). Here, however, constitutional claims were presented to and considered by the Puerto Rico Supreme Court. Any particular claims that were not presented would be barred by the doctrine of res judicata. *Lovely v. Laliberta*, 408 F.2d 1261 (1st Cir.), *cert. denied*, 419 U.S. 1038 (1974).



**IN THE
Supreme Court of the United States
OCTOBER TERM**

No. 79-123

EDELMIRO MARTINEZ RIVERA
Petitioner,

versus

**HECTOR COLON CRUZ, JOSE TRIAS MONGE,
CARLOS V. DAVILA, HIRAM TORRES RIGUAL,
ANGEL M. MARTIN, JORGE DIAZ CRUZ, CARLOS J.
IRIZARRY YUNQUE, AND ANTONIO S. NEGRON
GARCIA, INDIVIDUALLY**
Respondents.

ON

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
PUERTO RICO**

MOTION FOR RECONSIDERATION

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IN THE
Supreme Court of the United States
OCTOBER TERM

No. 79-123

EDELMIRO MARTINEZ RIVERA

Petitioner,

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HECTOR COLON CRUZ, JOSE TRIAS MONGE,
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Respondents.

ON

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE COMMONWEALTH OF
PUERTO RICO

MOTION FOR RECONSIDERATION

Petitioner, Edelmiro Martínez-Rivera, respectfully
prays this Honorable Court that it reconsider the order
entered on October 1, 1979, denying in this case the petition
for a writ of Certiorari.

ARGUMENT

This court has repeatedly held, and just recently
emphasized in *Torres, Appellant, vs. Commonwealth of
Puerto Rico*, No. 77-1609 (June 18, 1979), that in the
exercise of its governmental powers Puerto Rico is subject,
1, to the First Amendment speech clause, *Balzac vs. Porto
Rico*, 258 U. S. 298 (1922) at page 314; 2, to the Due Process
Clause of either the Fifth or the Fourteenth Amendment,
Calero Toledo vs. Pearson Yacht Leasing Co., 416 U. S. 663,
n. 5 (1974); and 3, the Equal Protection guarantee of either

the Fifth or Fourteenth Amendment, *Examining Board vs. Flores de Otero*, 426 U. S. 572 (1976).

When Congress authorized the people of Puerto Rico to adopt a constitution, its only express substantive requirements were that the document should provide for a republican form of government and "include a bill of rights". Act of July 3, 1950, ch. 446, Section 2, 64 Stat. 319, 48 U.S.C. Sec. 731c. A constitution containing the language of the Fourth Amendment, as well as additional language reflecting this Court's exegesis thereof, P. R. Const., Act. 2, Section 10, was adopted by the People of Puerto Rico and approved by Congress. See Act of July 3, 1952, ch. 567, 66 Stat. 327. That constitutional provision remains in effect.

Besides, Congress has provided by statute that Puerto Rico must accord to all citizens of the United States the privileges and immunities of its own residents. Act of August 5, 1947, Sec. 7, 61 Stat. 772, 48 U.S.C. Set 737. See *Torres vs. Commonwealth of Puerto Rico*, (June 18, 1979), *supra*.

We submit, therefore, that the judgment of the Supreme Court of Puerto Rico the subject of the present Petition for a Writ of Certiorari may not stand on Respondent's claim that the Petition does not present a substantial Federal Question upon which this Honorable Court would have jurisdiction under 28 U.S.C. 1258(3).

As it clearly and affirmatively appears of record, the only question Petitioner raised in the instant case before the Supreme Court of Puerto Rico was that the Superior Court of San Juan decreed the dismissal of the action "without notice or hearing, in violation of Petitioner's constitutional guarantee to Due Process of Law", question on which it appears the Supreme Court of Puerto Rico refused to hear the herein Petitioner as Appellant below, saying simply that "*Nothing in the law or in the Constitution required said /Superior/ Court to hear plaintiff before deciding that it lacked authority to act.*" See Appendix B to the Petition, pages 2a - 3a.

Obviously, precisely this cover-up statement with which the Supreme Court of Puerto Rico sought to impede the just disposition of the controversy, is, in our view, what gives life and substance to a Federal constitutional issue of concern by this Court.

As a Court of last resort of the Island, the Supreme Court of Puerto Rico can only act in accordance with all the limitations imposed not just by the Constitution and laws of Puerto Rico, but by the Constitution and laws of the United States of America, as well. The ethical issue raised in the herein petition based on Respondents' conceded participation in the consideration and decision of the appeal, acting as Justices of their own cause as appellees, is one thing that this Court should not overlook. When the image of the judiciary is tarnished, the moral authority of the Courts is critically undermined.

No one may deny that any act of any branch of the government of the Commonwealth of Puerto Rico in conflict with the Constitution of the United States or the Constitution of Puerto Rico would be null and void, and that any individual who considers himself aggrieved or injured thereby has a right to resort to the Courts for a remedy.

How appropriate to quote here what this Court observed in this respect, in *Marbury vs. Madison*, (1803) 1 Cranch 137, 2 L. Ed. 60:

"From these, and many other selections which might be made, it is apparent, that the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature.

"Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies in a special manner, to their conduct in their Official character. *How immoral to impose it on them, if they were to be used as the instruments,*

and the knowing instruments, for violating what
they swear to support!

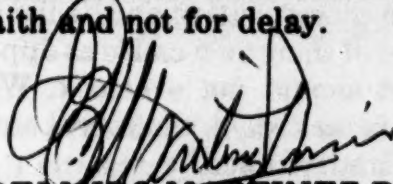
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CONCLUSION

FOR THESE REASONS, Petitioner respectfully prays
this Honorable Court to reconsider and vacate its Order
denying in this case the petition for a Writ of Certiorari to
the Supreme Court of the Commonwealth of Puerto Rico.

I hereby certify that this motion for reconsideration is
presented in good faith and not for delay.



EDELMIRO MARTINEZ-RIVERA
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CERTIFICATE

I certify that I have served the foregoing Motion to
Héctor A. Colón-Cruz, Solicitor General, Attorney for
Respondents, Department of Justice, Box 192, San Juan,
Puerto Rico, 00902, by U. S. Mail, postage prepaid, this
23 day of October, 1979.



EDELMIRO MARTINEZ-RIVERA